IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.782 OF 2006

Shri Shivneri Sahakari Bank Ltd. & Anr... Petitioners

Versus

Shri Pradip Gajananrao Golangade & ors... Respondents

Mr.M.P.Vashi, Sr.Counsel with Mr. Amit Borkar for petitioners

Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.P.S.Dani for responddent nos.1 and 2

CORAM : S. C. DHARMADHIKARI, J

DATE : 24th FEBRUARY, 2006

P.C.:

1. Heard Mr.Vashi appearing for the petitioners and Mr.Dhakephalkar, Sr.Counsel appearing for the respondent nos.1 and 2.

2. This matter was placed yesterday and upon conclusion of the arguments it is placed for passing orders today. The matter was placed today only because

parties requested me for time to take instructions and find out as to whether the revision application and application for stay preferred by the respondent nos.1 and 2 can be heard by a Divisional Joint Registrar other than Incharge of Kolhapur Division. This course was suggested because serious allegations are made by the petitioners herein against the Divisional Joint Registrar, Kolhapur. That the matter be placed before any other Joint Registrar is the request made by Shri Vashi and it is not opposed by Mr.Dhakephalkar.

3. It is brought to my notice that a Recovery Certificate has been issued in favour of the petitioner-bank and against the respondent nos.1 and 2 herein. The said Recovery Certificate was challenged before the Divisional Joint Registrar, Kolhapur. The proceedings initiated in pursuance of Recovery Certificate were challenged by respondent nos.1 and 2 before the Divisional Joint Registrar but that revision application was dismissed for want of compliance with Section 154(2A) of the Maharashtra Cooperative Societies Act, 1960.

4. That order was challenged by instituting Writ

Petition No.4372 of 2005 in this Court and the learned Single Judge by his Order dated 19th July 2005 noticing the conflict between two views of single judges of this court referred the question framed by him in para 7 of his order, for decision to a larger bench. However, he refused the prayer of respondent nos.1 and 2 herein for interim relief.

5. Thereafter, the Special Recovery Officer proceeded to execute the Recovery Certificate and issued notices calling upon the borrowers/guarantors to pay amounts under the recovery certificate within the time stipulated, failing which he informed that coercive measures would be initiated to recover the amounts thereudner.

6. A proclamation of sale was issued after the notice and the said proclamation is challenged by respondent nos.1 and 2 by filing a Revision Application being Revision Application No.17 of 2006.

7. An application for stay was made and by the order under challenge the Divisional Joint Registrar, Cooperative Societies, Kolhapur Division, Kolhapur has

stayed the sale proclamation until further orders.

8. The grievance of Mr.Vashi is that after the stay application was placed before the Divisional Joint Registrar and the aforesaid order was passed a request was made to vacate the stay or alternatively to dispose of the revision application itself. Shri Vashi has invited my attention to the averments made in para 12 of this writ petition making a grievance that both requests of petitioner-bank have not been accepted to and the Divisional Joint Registrar proceeded on leave.

9. Mr.Dhakephalkar, upon taking instructions, made a statement that an offer for settlement would be made to put an end to the dispute finally. However, later on, it appears that, the matter could not be settled. Shri Dhakephalkar supported the order under challenge on the plea that the proclamation notice was ex-facie bad in law. That apart, considering the nature of the application and the order under challenge in the revision application, no compliance is necessary with Section 154(2A) of the Maharashtra Cooperative Societies Act, 1960. Therefore, the stay granted should not be vacated at this interlocutory stage.

10. After hearing both sides, in my view, considering the seriousness of the charge levelled by the petitioner-bank against the Divisional Joint Registrar and further his conduct in not taking cognizance of the reasonable request of the petitioner-bank, I indicated that the matter could be transferred to some other Divisional Joint Registrar. Parties could be protected in as much as instead of a blanket order of stay an order directing both sides to maintain status-quo would be passed and the application will be heard expeditiously.

11. Mr. Borkar points out that the present Divisional Joint Registrar is charge of entire Pune Division and it is not possible to go to any adjoining District as there is no Officer available of equivalent rank. However, he submits that the petitioner is agreeable that the matter be heard at Mumbai and the Divisional Joint Registrar, Mumbai be directed to hear and dispose of this matter at Mumbai.

12. It is unfortunate that the Divisional Joint Registrars who have been empowered by the Maharashtra

Cooperative Societies Act to decide revision applications challenging the orders issuing recovery certificates and actions initiated in execution thereof are taking the matter casually and lightly. They ought to be aware that an order of stay, if granted, an endeavour should be made to decide the revision applications expeditiously. If for any reason or on account of unavoidable circumstances, main matter could not be heard within a reasonable time then appropriate course is to take cognizance of application for modification of stay order passed therein. However, they cannot, by their conduct, give an impression that orders are passed for some extraneous reasons. Parties cannot be permitted to wriggle out of their commitment to the bankers and obligations arising under written contracts. The Divisional Joint Registrar should take an independent view as he is an impartial adjudicator. The allegations made in the writ petition are not controverted. In the present case, considering the serious allegations made in the petition and during the course of oral arguments, it is desirable that the matter is transferred to Mumbai for being heard by the Divisional Joint Registrar, at Mumbai. Accordingly the following order -

(i) The Divisional Joint Registrar, Mumbai to hear the application for stay in accordance with law before 28th March 2006.

(ii) The Divisional Joint Registrar decide the stay application without being influenced by any observation made in the impugned order.

(iii) The Divisional Joint Registrar to also endeavour and dispose of the main revision application expeditiously thereafter.

(iv) All contentions on merits of both sides are kept open.

(v) The parties to appear before the Divisional Joint Registrar, at Mumbai on 6th March 2006.

Mr.Borkar, undertakes to serve a copy of this order on the respondents as also forward the same to the Divisional Joint Registrar, Mumbai.

. In so far as the grievance made by the petitioner-bank and particularly the one set out in paragraph 12, it calls for a serious explanation and further action against Divisional Joint Registrar, Kolhapur Division, Kolhapur. A copy of this order be sent to the Secretary, Department of Cooperation and Textiles, Government of Maharashtra for seeking an explanation from the concerned Divisional Joint Registrar with regard to para 12 of writ Petition No.782 of 2006 and based upon the same take appropriate action against him in accordance with law.

. Petition disposed off. No costs.

(S.C.Dharmadhikari, J.)